

a

MINISTER OF LABOUR, MALAYSIA

v.

CHAN MENG YUEN

b

SUPREME COURT, KUALA LUMPUR

MOHD. YUSOFF MOHAMED SCJ

ANUAR ZAINAL ABIDIN J

HARUN HASHIM SCJ

[SUPREME COURT CIVIL APPEAL NO. 01-3-1991 AND NO. 02-44-1991]

24 JULY 1992

*c***ADMINISTRATIVE LAW:** *Exercise of administrative powers powers - Discretion - Whether Minister is required by law to give reasons for his decision.***LABOUR LAW:** *Employment - Termination of employment - Minister decided not to refer the representations to the Industrial Court - Whether Minister had acted reasonably.**d*This was an appeal against the decision of the High Court which granted the respondent's application for orders of *certiorari* and *mandamus* against the Minister of Labour.The central issue in these appeals was whether the Minister of Labour was required by law to give reasons in *certiorari* proceedings for his decision not to refer the representations of a workman who is not a member of a trade union of workmen to the Industrial Court.**Held:***e***[1]** On the facts, the Minister had acted reasonably in exercising his discretion not to refer the respondent's representations to the Industrial Court. However, it is open to the respondent to file a suit in the Civil Court for damages for wrongful dismissal as contemplated by s. 20(4) of the Industrial Relations Act 1967.*f***[2]** As the Minister had acted in accordance with the law in the instant case the appeal is allowed with costs. The order of the learned Judge was set aside and the decision of the Minister was restored.*[Appeal allowed with costs. Order of the learned Judge set aside. Decision of the Minister restored. Deposit refunded to appellant.]***[Bahasa Malaysia Translation of Headnote]***g***UNDANG-UNDANG PENTADBIRAN:** *Pelaksanaan kuasa pentadbiran - Budi bicara - Samada Menteri di kehendaki oleh undang-undang untuk memberi alasan bagi keputusannya.***UNDANG-UNDANG BURUH:** *Pekerjaan - Penamatan pekerjaan - Menteri memutuskan untuk tidak merujuk representasi ke Mahkamah Perusahaan - Samada Menteri bertindak dengan munasabahnya.**h*Ini adalah satu rayuan yang dikemukakan oleh Menteri Buruh terhadap keputusan Mahkamah Tinggi yang telah memberikan perintah *certiorari* dan *mandamus* yang dipohon oleh responden.*i*Persoalan pokok dalam rayuan-rayuan ini ialah sama ada mengikut undang-undang, Menteri Buruh dikehendaki memberi alasan dalam prosiding-prosiding *certiorari* terhadap keputusannya untuk tidak merujuk representasi pekerja yang tidak menjadi ahli kesatuan kepada Mahkamah Perusahaan.

Diputuskan:

[1] Di atas fakta-fakta kes ini, Menteri telah bertindak dengan munasabah bila beliau menggunakan budi bicaranya untuk enggan merujuk representasi responden kepada Mahkamah Perusahaan. Akan tetapi, adalah terpulang kepada responden untuk mengemukakan suatu guaman kepada Mahkamah Sivill untuk menuntut ganti rugi terhadap pemecatan salah sepertimana dijangkakan oleh s. 20(4) Akta Perusahaan 1967.

[2] Oleh kerana Menteri telah bertindak mengikut undang-undang dalam kes ini maka rayuan ini dibenarkan dengan kos. Perintah Hakim Yang Arif diketepikan dan keputusan Menteri dipulihkan.

[Rayuan dibenarkan dengan kos. Perintah Hakim Yang Arif diketepikan. Keputusan Menteri dipulihkan. Deposit dikembalikan kepada perayu.]

Cases referred to:

Minister of Labour, Malaysia v. Sanjiv Oberoi & Anor. [1990] 1 MLJ 113 (foll)
Minister of Labour, Malaysia v. National Union of Journalists, Malaysia and another appeal [1991] 1 MLJ 24; [1991] 1 CLJ 31 (dist)
Rex v. Northumberland Compensation Appeal Tribunal, Ex-parte Shaw [1952] 1 KB 338 (foll)
Reg v. Secretary of State for Trade and Industry, Ex-parte Lonrho Plc [1989] 1 WLR 525 (foll)
Associated Provincial Picture Houses, Ltd. v. Wednesbury Corpn. 2 All ER 680 (cit)
Cannock Chase District Council v. Kelly [1978] 1 WLR 1 (cit)
National Union of Hotel, Bar and Restaurant Workers v. Minister of Labour and Manpower [1980] 2 MLJ 189 (foll)

Legislation referred to:

Industrial Relations Act 1967 s. 20, (1), (2), (3), (4)

For the appellant in 01-3-91 - Susila S. Param, SFC (Attorney General's Chambers)

For the appellant in 02-44-91 - V.T. Nathan (Peh Lee Kheng with him); M/s. Shearn Delamore & Co. and Drew & Napier

For the respondent (in both appeals) - B. Lobo; M/s. Lobo & Associates

[**Editorial Note:** (i) In the Supreme Court Civil Appeal No. 01-3-1991, the litigants were: *The Minister of Labour v. Chan Meng Yuen*

(ii) In the Supreme Court Appeal No. 02-44-1991, the litigants were: *Magnum Corpn. Bhd. v. Chan Meng Yuen*]

JUDGMENT

Harun Hashim SCJ:

The respondent in both these appeals was employed by the appellant in Rayuan Sivil No. 02-44-91 (Magnum) as an accountant on 1 September 1978. On 1 August 1985 he was promoted to the position of general manager (4-D Operations) with an increase in monthly salary to RM8,000 with effect from 1 January 1986. On 1 April 1987 there was a change of name from gaming department to gaming division and the respondent was appointed head of that division.

By letter of 24 June 1987 Magnum informed the respondent that following a review of the company's management requirements, it was decided to abolish the position of head, gaming division and that he would be retrenched (with retrenchment benefits) with effect from 1 October 1987. According to Magnum, the function of head of gaming division could be

- a** performed by the Group general manager, as the latter's duties had since decreased. According to the respondent, however, there was no justification to abolish the position of head of gaming division as the duties of that position had not changed with re-organisation and it was also the principal income earner of the company. The respondent appealed against the retrenchment. There were discussions and on 25 September 1989 Magnum offered respondent the position of manager (special functions). The respondent rejected the offer
- b** on the grounds that what was promised him verbally during discussions was not reflected in the written offer.

- The respondent considered that he had been dismissed without just cause or excuse and accordingly on 22 October 1987 made representations to the Director-general of Industrial Relations under s. 20(1) of the Industrial Relations Act 1967. The Director-general held a conciliation meeting on 11 November 1987 and notified to the Minister on 27 August 1988
- c** that there was no likelihood of settlement. On 8 October 1988 the Minister decided not to refer the representations to the Industrial Court. The respondent then applied to the High Court for orders of *certiorari* and *mandamus*. The learned Judge granted these orders. Hence these appeals before us.

- d** The central issue in these appeals is whether the Minister is required by law to give reasons for his decision. Section 20 of the Industrial Relations Act (before its amendment on 10 February 1989) provided:

- (1) Where a workman who is not a member of a trade union of workmen considers that he has been dismissed without just cause or excuse by his employer he may, within thirty days of the dismissal, make representations in writing to the Director general to be reinstated in his former employment, the representations may be filed at the office of
- e** the Director general nearest to the place of employment from which the workman was dismissed.
- (2) Upon receipt of the representations the Director general shall take such steps as he may consider necessary or expedient so that an expeditious settlement thereof is arrived at; where the Director general is satisfied that there is no likelihood of the representations being settled, he shall notify the Minister accordingly.
- f** (3) Upon receiving the notification of the Director general under subsection (2), the Minister may, if he thinks fit, refer the representations to the Court for an award.
- (4) Where an award has been made under subsection (3), the award shall operate as a bar to any action for damages by the workman in any Court in respect of wrongful dismissal.
- (5) ...

- g** The Minister (appellant in Rayuan Sivil No. 01-3-1991) contends that he is not required by law to give any reason for his decision. It is an exercise of ministerial discretion in which policy decisions come into play. In refusing to refer the representations to the Industrial Court, he is not deciding on the merits of the dismissal or otherwise. It is a matter of policy that the respondent should not be permitted to use the Industrial Court as the forum to resolve the dispute between him and his employer but if he has a good case he should sue
- h** the employer in the Civil Court in an action for damages for wrongful dismissal. Finally, it is contended that this is not a proper case for the High Court to interfere with the Minister's exercise of discretion.

- On the other hand, the respondent contends that the exercise of discretion by the Minister is not unfettered. It was urged upon us that when the decision of the Minister is challenged in the High Court and it is alleged that he has acted unreasonably, the Minister is duty
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bound to give his reasons. And it is not possible to conclude that the Minister has acted reasonably or otherwise without going into the facts of the case. Finally, it is argued that if the Minister does not give reasons for his decision then he has no good reason in refusing to make the reference to the Industrial Court and therefore has acted unreasonably.

In these appeals it is common ground that the Minister has a discretion under s. 20(3) of the Act. In his affidavit, the Minister said:

3. On or about 27 August 1988 and pursuant to s. 20(2) of the Industrial Relations Act 1967, the Director general for Industrial Relations notified me that there was no likelihood of a settlement of the representations for reinstatement made by the applicant.
4. I duly considered the said notification which included, *inter alia*, a report of the steps taken to resolve the applicant's representations for reinstatement.
5. Having considered the matter carefully, I exercised my discretion under s. 20(3) of the Industrial Relations Act 1967 and decided that it was not fit to refer the applicant's representations to the Industrial Court. My decision was conveyed to the applicant by letter dated 8 October 1988.
6. I declare that in making the decision stated above, I exercised the discretion invested in me fairly and impartially.

From this affidavit it is clear that the various steps have been complied with up to the stage when the Minister decided not to refer the representations to the Industrial Court. It is equally clear he has not stated his reasons in arriving at that decision. The question is whether he is required by law to do so. This Court, in *Minister of Labour, Malaysia v. Sanjiv Oberoi & Anor.* [1990] 1 MLJ 113 held:

The Minister of Labour is not required to give any reasons when he exercises his discretion under s. 20(3) of the Industrial Relations Act 1967.

The next question is whether the Minister is required to give his reasons when challenged in *certiorari* proceedings. During the course of argument, several cases were cited to us but they were all cases where the Minister had given his reasons: see e.g. *Minister of Labour, Malaysia v. National Union of Journalists, Malaysia and another appeal* [1991] 1 MLJ 24, SC. What is clear from the decided cases, however, is that the Courts cannot compel the Minister to give reasons for his decision where there is no duty to do so: *Minister of Labour, Malaysia v. Sanjiv Oberoi & Anor.* (*supra*). Indeed in *Rex v. Northumberland Compensation Appeal Tribunal, Ex parte Shaw* [1952] 1 KB 338 Lord Denning at p. 352 said:

I think the record must contain at least the document which initiates the proceedings; the pleadings, if any; and the adjudication; but not the evidence, **nor the reasons**, unless the tribunal chooses to incorporate them. If the tribunal does state its reasons, and those reasons are wrong in law, *certiorari* lies to quash the decision.
(Emphasis supplied)

In *Reg. v. Secretary of State for Trade & Industry, Ex parte Lonrho Plc.* [1989] 1 WLR 525, Lord Keith of Kinkel in the House of Lords said at p. 529:

The absence of reasons for a decision where there is no duty to give them cannot of itself provide any support for the suggested irrationality of the decision. The only significance of the absence of reasons is that if all other known facts and circumstances appear to point overwhelmingly in favour of a different decision, the decision-maker, who has given no reasons, cannot complain if the Court draws the inference that he had no rational reason for his decision.

- a** On what facts and circumstances should a judicial review Court rely when deciding whether the Minister has exercised his discretion according to law? In like cases as the present, the real contesting parties are the employer and the workman. Both sides have presented their version of the case to the Court which cannot be any different from that laid before the Director general of Industrial Relations and the Minister. That is the only material which the Court has to consider. In the present case, there is only the bare allegation that the Minister has acted unreasonably because he has not given reasons for his decision. That is not enough.
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The respondent must show that the Minister acted unreasonably: *Associated Provincial Picture Houses, Ltd. v. Wednesbury Corporation* [1947] 2 All ER 680 or that he acted in bad faith: *Cannock Chase District Council v. Kelly* [1978] 1 WLR 1. There is no such evidence here.

- c** It was urged before us that in exercising his discretion under s. 20(3) of the Act, policy decisions come into play and following *National Union of Hotel, Bar & Restaurant Workers v. Minister of Labour & Manpower* [1980] 2 MLJ 189 FC the Courts should not interfere. In that case the Minister gave his reasons. He has not done so here but it was suggested by the learned Senior Federal Counsel who appeared for the Minister that the policy decision was that as there is an alternative remedy available to the respondent to seek relief in the Civil Court the Minister has acted reasonably. That may be so but the Minister has not said so and we cannot accept a statement from the Bar as being the reason the Minister had in arriving at his decision. We can only look at the facts as stated in the affidavits before the Court.
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What then are the facts in this case?

- e** Firstly, that the respondent is being **retrenched** from employment on account of the company's review of its management requirements. The company had an overseas subsidiary company (Phicom PLC) which was under the responsibility of the group general manager. That subsidiary company was disposed off in June 1987 resulting in the group general manager having less responsibilities. As the main business activity of the company is the gaming division, the board of directors of the company decided that the group general manager should take over direct responsibility of the gaming division. It is obvious that one of them had to go, either the group general manager or the respondent. The directors decided on the respondent. Secondly, retrenchment is an accepted eventuality in the private sector. In the instant case, provision was made for such an eventuality in the respondent's terms of employment and an amount of RM72,666.67 was payable to the respondent as retrenchment benefits for his nine (9) years service with the company. Thirdly, at his request the respondent was offered re-employment by the company at the same salary with continuity of service from 1978 but he turned it down because the other terms of re-employment were not what had been promised him verbally. The position offered was that of manager (special Functions) reporting direct to the group general manager and to "be given special assignments whenever necessary and where appropriate with the Magnum Group of Companies." This offer clearly shows that the respondent was indeed redundant to the company's management requirements in respect of his late position and an act of indulgence on the part of the company.
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On these facts, we are of the view that the Minister acted reasonably in exercising his discretion not to refer the respondent's representations to the Industrial Court. It certainly cannot be said that the facts point overwhelmingly in favour of a different decision. If the respondent is still aggrieved from the decision, it is open to him to file a suit in the Civil

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Court for damages for wrongful dismissal. This is clearly contemplated by s. 20(4) of the Act. It is true that if he succeeds in that Court he may not get much (as stated by Mr. Lobo) but that is not the reason why the matter should be referred to the Industrial Court in view of the amount of retrenchment benefits he is entitled to here.

We hold that the Minister has acted in accordance with the law in the instant case. For the reasons stated, we would allow the appeal with costs here and below. The orders of the learned Judge are set aside and the decision of the Minister is restored. Deposit to be refunded to the appellants.

Also found at [1992] 4 CLJ 1808

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